IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 199 of 2005
With
CRIMINAL MISC.APPLICATION No. 1213 of 2005
In CRIMINAL APPEAL No. 199 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH
and
HONOURABLE MR.JUSTICE D.H.WAGHELA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KALU TAPU BADLANIYA - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
MR SHAKTISINH GOHIL for Appellant(s) : 1,
MR RC KODEKAR APP for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.S.SHAH
and
HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 14/09/2005

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE M.S.SHAH)

When Criminal Misc. Application No.1213 of 2005 for bail came up for hearing, Mr Shaktisinh Gohil, learned advocate for the applicant-appellant submitted that in the facts and circumstances of the case and looking to the nature of the evidence, the appellant does not wish to challenge the order of conviction but only prays for reduction of sentence. Mr Gohil, learned advocate accordingly prayed that the appeal may be taken up for hearing on the limited question of sentence and, therefore, production of paper book may be dispensed with.

2. In view of the above request, we dispense with the preparation and production of the paper book. We have accordingly heard the learned advocate for the appellant and the learned APP on the question of sentence.

3. Mr Gohil, learned advocate for the appellant has submitted that the appellant has been doing the business of commission agent and in the course of that business the appellant had received currency notes from accused Nos.2, 3 and 4 and the appellant had in the said course of business circulated the notes to the farmers from whom the appellant had purchased the agricultural produce like cotton in the appellant's capacity as a commission agent. It is submitted that it was not the case of the prosecution witnesses that the appellant had paid more than the normal price for the commodities that he had purchased from the farmers. Mr Gohil for the appellant has vehemently submitted that even according to the prosecution the charge against the

appellant was not under Section 489-A but charge was under Section 489-B and 489-C. It is submitted that accused Nos.2, 3 and 4 who were charged with the offence of making fake currency notes have been acquitted and the appellant against whom the charge was that of putting the fake currency notes in circulation has been punished and sentenced to life imprisonment and has also been convicted for the offence punishable under Section 420 IPC and has been sentenced to suffer 7 years rigorous imprisonment. Mr Gohil has submitted that the appellant could have contended that the appellant had no knowledge or reason to believe the currency notes in question to be forged or counterfeit, but the final hearing of the appeal after getting the paper book would take about 7 years and the appellant who has already undergone sentence for the last 1 year and 5 months would be required to undergo the sentence during pendency of the appeal for the next 7 to 8 years with the hanging sword of life sentence on his head. It is for this reason, submits Mr Gohil learned advocate for the appellant, that the appellant is not pressing his challenge to the order of conviction for the offences punishable under Sections 489-B, 489-C and Section 420 IPC.

Mr Gohil has also submitted that even as per the charge framed against the appellant, the appellant had circulated fake currency notes of the denomination of Rs.100 aggregating to the value of Rs.36,100/- and that even as per the case of PW 4 Jaysukhbhai Vajubhai Exh.68, a large number of currency notes had come from the diamond cutters who were working at Surat. Mr Gohil has further submitted that instead of proceeding against accused Nos.2,

3 and 4 who had given the currency notes in question to the present appellant in the course of their business, neither the investigating agency nor the prosecuting agency had taken the necessary steps for proving the offence against accused Nos.2, 3 and 4 who were charged with the offence of making such counterfeit currency notes. Mr Gohil has further submitted that as per the prosecution case as also the FSL report at Exh.106, the currency notes in question could be seen as counterfeit only upon examination under UE light. It is, therefore, submitted that in the facts and circumstances of the case, the sentence of life imprisonment is too harsh and a moderate sentence would serve the ends of justice and that the appellant has already undergone sentence for 1 year and 5 months and, therefore, even the sentence undergone may be considered as adequate in the facts and circumstances of the case.

4. On the other hand, Mr Kodekar, learned APP has supported the judgment under appeal and submitted that since the offences for which the appellant is convicted are offences punishable under Sections 489-B, 489-C and 420 IPC, sentence imposed by the trial Court is just and proper.

5. Having heard the learned counsel for the parties, we are of view of that although the finding of guilt against the appellant is not required to be re-examined since the appellant has given up his challenge to the order of conviction, nonetheless the evidence against the appellant is required to be briefly referred to while deciding the quantum of sentence to be imposed on the appellant.

6. All the prosecution witnesses are stated to be farmers who sold their agricultural produce like cotton to the appellant who was working as a commission agent. It is not the case of the prosecution witnesses that the appellant had lured them with a much higher price than the market price for such agricultural produce being sold by them. In his further statement under Section 313 also the appellant had stated that he was working as a commission agent for agricultural produce like oil seeds, groundnut seeds and that he had also started working as commission agent for procuring cotton and that in the course of his business he had received the currency notes from accused Nos.2, 3 and 4. It also appears from the evidence that total only 27 currency notes of denomination of Rs.100 were recovered from the appellant and even as per the charge against the appellant he had put into circulation in all about 361 currency notes of the denomination of Rs.100 each - aggregating to Rs.36,100/-. It also transpires from the evidence of PW 4 Jaysukhbhai Vajubhai as mentioned in para 51 of the judgment under appeal that the persons who were working as diamond cutters in Surat had brought the fake currency notes from Surat in the village. Of course there would be no evidence of such currency notes having been brought from Surat, but the statement made by the prosecution witness himself, who has not been declared to be hostile, cannot be overlooked altogether.

7. It would also not be out of place to refer to the statement being made by the learned advocate for the appellant that apart from accused Nos.2, 3 and 4 from whom the appellant had received the currency notes in question

having been acquitted, even accused Nos.5 to 8 against whom the charge of making currency notes was made have been acquitted. Admittedly, the charge against the present appellant was not of making any counterfeit notes.

8. Before concluding the discussion, we cannot help observing that in such cases it is only the last person in the chain against whom investigation is seriously conducted by the investigating agencies and against whom the prosecuting agency presses the case and the major culprits who make such forged and counterfeit currency notes, or in NDPS cases those who make such narcotics drugs, go scot free only because the investigating agency and the prosecuting agency rest content with securing conviction for the last person in the chain. Such agencies ought to invite the Court committing the case to the Sessions Court or the Sessions Court conducting trial to examine whether it would be a fit case for exercising powers under Section 306 or 307 of the Code of Criminal Procedure, 1973. The object of conferring such powers has been explained in the decision in **Abdul Kayum @ Mufti Sab Ahmadhusen Mansuri vs. State of Gujarat (Criminal Appeal No.1501 of 2005 decided on 21.7.2005**) wherein this Court has examined the scheme of Sections 306 and 307 of Cr PC and held that these provisions are not in the nature of safeguards for an accused but lay down a clear exception to the principle (embodied in Section 24 of the Indian Evidence Act) that no inducement shall be offered to a person to disclose what he knows about the offence. The provisions of Sections 306 and 307 empower or enable the Court to grant pardon to an accomplice in the crime, lest for want of evidence accused

should be acquitted. In the said decision, the Court has referred to the decision of the Apex Court in **Suresh Chandra Bahri vs. State of Bihar, 1995 Supp (1) SCC 80,** wherein the Apex Court held that there can be no objection against tender of pardon to an accomplice simply because in his confession, he does not implicate himself to the same extent as the other accused because all that Section 306 requires is that pardon may be tendered to any person believed to be involved directly or indirectly in or privy to an offence. Section 306 lays down a clear exception to the principle that no inducement shall be offered to a person to disclose what he knows about the offence.

9. In view of the above discussion, we are of the view that in the peculiar facts and circumstances of the case and considering the fact that at present the appellant is about 53 years old, imposing sentence of five years rigorous imprisonment on the appellant (accused No.1) for the offence punishable under Sections 489-B and 489-C IPC would serve the ends of justice. Similarly sentencing the appellant to suffer three years of rigorous imprisonment for the offence punishable under Section 420 IPC will also serve the ends of justice. The appellant shall undergo all the sentences concurrently.

It is directed accordingly.

The order of the trial Court imposing fine of Rs.1000/-, in default simple imprisonment of one month for the offence punishable under Section 489B and another sum of Rs.1000/- for the offence punishable under Section 489-C, in default simple imprisonment for one month and a further fine of Rs.1000/- for the offence punishable under

Section 420 IPC, in default simple imprisonment for one month, is confirmed.

10. The appeal is accordingly partly allowed.

11. As the appeal itself is disposed of, Criminal Misc. Application No.1213 of 2005 for bail till final disposal of the appeal does not survive and is disposed accordingly.

Notice is discharged.

(M.S. SHAH, J.) (D.H. WAGHELA, J.)

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